

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Michael Dever	Team: Team # 1	CCRB Case #: 200609791	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 07/22/2006 2:50 PM, Monday, 07/24/2006 , Friday, 08/25/2006	Location of Incident: 1) In front of 275 Canal Street 2) Corner of Canal & Lafayette Streets	Precinct: 05	18 Mo. SOL 1/22/2008	EO SOL 1/22/2008	
Date/Time CV Reported Sat, 07/22/2006 10:06 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 07/26/2006 2:34 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM James Famiano	07548	936568	5th Precinct

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Dwayne Watson	05123	940923	5th Precinct
2. SGT Christopher Cheng	01551	921054	5th Precinct

Officer(s)	Allegation	Investigator Recommendation
A.POM James Famiano	Force: Police Officer James Famiano struck § 87(2)(b) against a wall on July 22, 2006.	
B.POM James Famiano	Discourtesy: Police Officer James Famiano spoke obscenely and/or rudely to § 87(2)(b) on July 22, 2006.	
C.POM James Famiano	Abuse: Police Officer James Famiano refused to provide his name to § 87(2)(b) on August 24, 2006.	
D.POM James Famiano	Force: Police Officer James Famiano used physical force against § 87(2)(b) on August 24, 2006.	
E.POM James Famiano	Abuse: Police Officer James Famiano searched § 87(2)(b) on August 24, 2006.	

Synopsis

On 7-22-06 at 10:06 PM, Sergeant Veronica Nelson of Manhattan Central Booking called the IAB Command Center and reported that § 87(2)(b) alleged that PO James Famiano of the 5th Precinct struck § 87(2)(b)'s head against a wall during his arrest. EMS responded to Central Booking and transported § 87(2)(b) to § 87(2)(b). The IAB Log included § 87(2)(b)'s cellular phone number and his address.

After making numerous attempts to contact § 87(2)(b), the undersigned investigator interviewed him on 8-25-06. § 87(2)(b) reiterated his force allegation against PO Famiano and added that PO Famiano ordered him to "Get the fuck in the car" after handcuffing him. At the stationhouse, the arrest was assigned to PO Dwayne Watson, who escorted § 87(2)(b) to Central Booking and then to the hospital. § 87(2)(b) § 87(2)(b) and stated that PO Famiano and other officers harass him on a regular basis. The undersigned investigator subsequently interviewed PO Famiano, his partner, SGT Christopher Cheng and the officer who was assigned § 87(2)(b)'s arrest, PO Dwayne Watson. In addition, § 87(2)(b)'s medical records from 7-22-06 were obtained, as well as police documents regarding his arrest.

§ 87(2)(g)
§ 87(2)(b) stated that PO Famiano struck his head against a wall without provocation, which caused him to lose consciousness for at least thirty seconds. However, § 87(2)(b) himself testified that the paramedics who transported him to the hospital did not believe that he was injured and his medical records do not indicate that he lost consciousness. § 87(2)(g)

PO Famiano stated that § 87(2)(b) resisted arrest and that he had to forcibly handcuff § 87(2)(b) but § 87(2)(b) was not charged with resisting arrest and his arrest report does not indicate that force was used. In addition, § 87(2)(b) went to the hospital that night and was diagnosed with an injury to his head. § 87(2)(g)

§ 87(2)(g)
§ 87(2)(b) added that on 8-24-06, he approached PO Famiano and asked for his name. He alleged that PO Famiano refused to provide the information, and then pushed him and searched him. § 87(2)(b) did not provide the names of any witnesses to the incident and PO Famiano had no memo book entries regarding § 87(2)(b) on that date. § 87(2)(g)

Results of Investigation

Complainant/Victim Testimony – § 87(2)(b)

§ 87(2)(b) is a § 87(2)(b)-old black male who § 87(2)(b). He stands 6'2" tall and weighs about 230 lbs.

§ 87(2)(b) was interviewed on 8-25-06. He stated that on 7-22-06 at about 1:00 PM, he was showing a watch to a customer on Canal Street near the corner of Broadway. He was holding a bag with additional watches inside. § 87(2)(b)'s back was to the street and he was facing the front of a Burger King restaurant. He estimated that he was two yards away from the Burger King.

Suddenly, § 87(2)(b) felt himself being grabbed from the back of the neck. He was lifted off the ground and pushed toward the Burger King restaurant. He looked over his right shoulder to see who was pushing him. At that point, § 87(2)(b)'s head struck the wall of the restaurant. § 87(2)(b) was shocked and cried out, "Yo!" He stated that numerous people on the street heard him. He did not hear anyone say anything to him before he was pushed. § 87(2)(b) stated that he lost consciousness for about thirty to forty-five seconds. The next thing § 87(2)(b) knew, PO Famiano had handcuffed him and was pushing him toward a marked police vehicle. PO Famiano said, "Get the fuck in the car." § 87(2)(b) denied resisting.

PO Famiano and his partner, an Asian male officer later identified as SGT Christopher Cheng, transported § 87(2)(b) to the 5th Precinct stationhouse. During the ride, § 87(2)(b) told PO Famiano, "You hurt me! Why did you hurt me? You didn't have to do this. I never ran away from you." PO Famiano said that he thought § 87(2)(b) was going to run. At the stationhouse, PO Famiano placed § 87(2)(b) into a cell. § 87(2)(b) felt pain to his head and had a bump on the left side of his head. PO Famiano assigned § 87(2)(b)'s arrest to a black male officer, later identified as PO Watson. § 87(2)(b) told POs Famiano and Watson that he was hurt and wanted to go to the hospital, but they said that he had to wait until he went to Central Booking.

PO Watson transported § 87(2)(b) to Central Booking. When he was medically screened, § 87(2)(b) said that he was hurt and paramedics were called. However, when the paramedics arrived, they were reluctant to take him to the hospital. The paramedics did not seem to believe that he was injured and said that § 87(2)(b) was wasting their time and taxpayer money. However, § 87(2)(b) insisted to be transported to the hospital, so he was transported to § 87(2)(b). A doctor examined him and said that nothing was wrong with his brain and said that he had swelling to his head. The doctor gave him Tylenol. § 87(2)(b) stated that he told the doctor that he had lost consciousness during the incident. § 87(2)(b) received no further treatment and was returned to Central Booking. § 87(2)(b) claimed that PO Famiano and other officers harass him on a regular basis and has stopped and searched him about three times.

§ 87(2)(b) stated that on 8-24-06 at about 7:00 PM, he was at the corner of Canal and Lafayette Streets. He saw PO Famiano and another officer in a van. PO Famiano was driving. PO Famiano and his partner left the vehicle and asked someone for identification. § 87(2)(b) did not know PO Famiano's name or badge number at that time, so he approached PO Famiano to get his name and badge number. PO Famiano asked § 87(2)(b) "What are you doing here?" § 87(2)(b) replied, "I want to know your name." PO Famiano said, "Don't threaten me." He pushed § 87(2)(b) and searched his pockets. PO Famiano ordered § 87(2)(b) to give him his identification so PO Famiano could check him for warrants.

Police Officer James Famiano

On 7-22-06, Officer Famiano and his partner, Sergeant Christopher Cheng, were dressed in uniform and using unmarked vehicle # 195, a gray sedan. PO Famiano was operating the vehicle.

Officer Famiano is a § 87(2)(b)-old white male. He stands 5'10" tall and weighs about 190 lbs.

PO Famiano was interviewed on 9-1-06. He stated that on 7-22-06 at 2:45 PM, he and SGT Cheng were traveling westbound on Canal Street when they spotted a man, later identified as § 87(2)(b) selling watches in front of 277 Canal Street. PO Famiano had not seen § 87(2)(b) before that date, but stated that illegal vending is a condition in that area. PO Famiano and SGT Cheng stopped and saw § 87(2)(b) give watches to two people in exchange for currency. He took the watches out of a black bag that he was holding in his right hand. After observing § 87(2)(b) for a short time, PO Famiano and SGT Cheng left their vehicle and approached him. PO Famiano stated that § 87(2)(b) was standing in the middle of the sidewalk with his back was to the building, so § 87(2)(b) saw him and SGT Cheng approaching.

When PO Famiano reached § 87(2)(b) he said, "You're under arrest" and grabbed § 87(2)(b)'s wrists. § 87(2)(b) dropped his bag and began pulling his arms away from PO Famiano. PO Famiano maintained his grip on § 87(2)(b)'s wrists and said, "Stop resisting!" He pulled § 87(2)(b)'s arms down, spun him around and quickly handcuffed him. PO Famiano denied pushing § 87(2)(b) against the building. SGT Cheng assisted by holding one of § 87(2)(b)'s arms while PO Famiano handcuffed him. No additional officers responded to the scene. PO Famiano placed § 87(2)(b) in the backseat of the vehicle and reported over the radio that he had made an arrest. He denied telling § 87(2)(b) to, "Get the fuck in the car" and stated that neither he nor SGT Cheng used any profanity toward him. § 87(2)(b) never complained of injuries and PO Famiano did not see any injuries to him.

PO Famiano and SGT Cheng transported § 87(2)(b) to the 5th Precinct stationhouse. PO Famiano did not recall him saying anything during the ride. After § 87(2)(b) was placed in a cell, PO Famiano asked him if he needed medical attention, but he declined. PO Famiano noted in his memo book that § 87(2)(b) was in good physical condition. He did not recall § 87(2)(b) asking him for his name or shield number.

PO Famiano stated that he did not interact with § 87(2)(b) on 8-24-06 and had no memo book entries indicating as such.

Sergeant Christopher Cheng

Sergeant Cheng is a § 87(2)(b)-old Asian male who stands 5'11" tall and weighs about 185 lbs.

SGT Cheng was interviewed on 12-6-06. He stated that on 7-22-06 at about 2:50 PM, he and PO Famiano were driving on Canal Street when PO Famiano pointed at § 87(2)(b) and stated that § 87(2)(b) was selling watches. SGT Cheng did not personally observe § 87(2)(b) sell anything. However, he stated that illegal vending is a condition in that area. SGT Cheng stopped and PO Famiano left the vehicle and began approaching § 87(2)(b). Traffic conditions were heavy at that time and the sidewalk was full of pedestrians. After parking, SGT Cheng left the vehicle and saw PO Famiano standing with § 87(2)(b). § 87(2)(b) was standing in the doorway of a Burger King. § 87(2)(b) was rear-handcuffed and PO Famiano was holding one of his arms. SGT Cheng did not observe PO Famiano use any physical force against § 87(2)(b). § 87(2)(b) was "belligerent," protesting his arrest and moving his shoulders. SGT Cheng never observed any injuries to § 87(2)(b) and never heard him complain of injuries or request medical attention. PO Famiano placed § 87(2)(b) into the unmarked vehicle. § 87(2)(b) did not resist entering the vehicle. SGT Cheng stated that PO Famiano never told § 87(2)(b) to "Get the fuck in the car" and never used any profanity toward him. SGT Cheng and PO Famiano transported § 87(2)(b) to the stationhouse. § 87(2)(b)'s arrest was subsequently assigned to PO Watson.

Police Officer Dwayne Watson

Officer Watson is § 87(2)(b)-old black male who stands 5'9" tall and weighs 135 lbs. On 7-22-06, he was dressed in uniform and assigned to an Operation Impact foot post.

PO Watson prepared § 87(2)(b)'s Arrest Report, which shows that he was charged with § 87(2)(b). The narrative states, "§ 87(2)(a) 160.50 § 87(2)(b).” The report indicates that force was not used to effect the arrest.

PO Watson was interviewed on 11-6-06. He stated that at about 3:00 PM, he was doing paperwork in the stationhouse when PO Famiano assigned § 87(2)(b)'s arrest to him. PO Famiano was standing at the desk § 87(2)(b) who was charged with § 87(2)(b) § 87(2)(b). PO Watson had never seen § 87(2)(b) before. § 87(2)(b) was upset that he had been arrested, but PO Watson did not recall anything he said. PO Famiano told PO Watson that he had observed § 87(2)(b) selling watches on the corner in front of 275 Canal Street and arrested him. PO Famiano did not tell PO Watson that he had used force during the arrest or that § 87(2)(b) was injured or claimed that he was injured. PO Watson did not personally observe any injuries to § 87(2)(b).

PO Watson searched § 87(2)(b), removed his shoelaces and placed him in a holding cell. § 87(2)(b) was quiet while he was in the holding cell and did not request medical attention. PO Watson escorted § 87(2)(b) to Central Booking at 9:00 PM and § 87(2)(b) was medically screened at 9:50 PM. He complained that the officer who arrested him struck his head against a wall and he had a headache, so he was transported to § 87(2)(b) by ambulance. PO Watson went in the ambulance with § 87(2)(b) and they arrived at the hospital at 10:12 PM. PO Watson never heard § 87(2)(b) state that he had lost consciousness. PO Watson stated that neither he nor any other officer cursed at § 87(2)(b). § 87(2)(b) was seen by a doctor at § 87(2)(b) and administered Tylenol. PO Watson escorted § 87(2)(b) from the hospital to Central Booking at § 87(2)(b).

Medical Records for § 87(2)(b)

§ 87(2)(b)'s medical records from § 87(2)(b) indicate that he was registered as a patient on § 87(2)(b). § 87(2)(b) stated that the left side of his head hurt as a result of a police officer pushing his head against a wall during his arrest. The records note that he had a hematoma, which is a condition where blood collects under the skin after an injury. § 87(2)(b) was diagnosed with “minor head trauma.” He was administered Tylenol and released at § 87(2)(b).

Arrest Photograph

The NYPD Photo Unit did not have an arrest photograph of § 87(2)(b) on file in connection with his arrest on 7-22-06.

Court Disposition of § 87(2)(b)'s 7-22-06 Arrest

§ 87(2)(b)) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Lawsuit

According to the NYC Comptroller's Office, § 87(2)(b) has not filed a lawsuit in connection with these incidents.

Criminal Conviction History of § 87(2)(b)

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

CCRB History of Police Officer Famiano

PO Famiano has no substantiated CCRB cases on his record over one year on the force.

Conclusions and Recommendations

Undisputed Facts

It is undisputed that PO Famiano approached § 87(2)(b) and arrested him for § 87(2)(b) on 7-22-06. PO Famiano used physical force to handcuff § 87(2)(b) § 87(2)(g)

Officer Identification

§ 87(2)(b) identified PO Famiano as the officer who used physical force against him and cursed at him on 7-22-06, § 87(2)(g) § 87(2)(b) further alleged that on 8-24-06, PO Famiano refused to provide his name, and then pushed and searched him. § 87(2)(g)

Assessment of Evidence

§ 87(2)(g)

§ 87(2)(b) stated that PO Famiano struck his head against a wall without provocation, which caused him to lose consciousness for at least thirty seconds. In addition, his medical records from § 87(2)(b) show that he had an injury that was consistent with his force allegation against PO Famiano. However, § 87(2)(b) himself testified that the paramedics who transported him to the hospital did not believe that he was injured and his medical records do not indicate that he lost consciousness. § 87(2)(g) PO Famiano stated that § 87(2)(b) resisted arrest and that he had to forcibly handcuff § 87(2)(b) but § 87(2)(b) was not charged with resisting arrest and his arrest report does not indicate that force was used. It is true that PO Watson prepared the arrest report, but PO Watson testified that PO Famiano never told him that § 87(2)(b) resisted arrest or that he had to use force to handcuff § 87(2)(b)

A. Force: Police Officer James Famiano struck § 87(2)(b) against a wall on July 22, 2006.

§ 87(2)(g)
[REDACTED]

B. Discourtesy: Police Officer James Famiano spoke obscenely and/or rudely to § 87(2)(b) on July 22, 2006.

§ 87(2)(g)
[REDACTED]
Administrative case law has established that police officers are allowed to use profanity in the context of legitimate law enforcement-related commands. In *PD v. Dukes and Conway* (2000), an Administrative Law Judge ruled, "...when an officer uses profanity in trying to secure a civilian's cooperation or for other legitimate law enforcement ends, the profanity may not rise to the level of misconduct." § 87(2)(g)
[REDACTED]

C. Abuse of Authority: Police Officer James Famiano refused to provide his name to § 87(2)(b) on August 24, 2006.

D. Force: Police Officer James Famiano used physical force against § 87(2)(b) on August 24, 2006.

E. Abuse of Authority: Police Officer James Famiano searched § 87(2)(b) on August 24, 2006.

§ 87(2)(b) did not provide the undersigned investigator with the names of any witnesses § 87(2)(g)
[REDACTED]
[REDACTED] PO Famiano had no memo book entries indicating that he stopped § 87(2)(b) on that date. § 87(2)(g)
[REDACTED]

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: